

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Case No. 12-00098-01-CR-W-HFS
)
)
MITCHELL R. GREEN, JR.,)
)
)
Defendant.)

REPORT AND RECOMMENDATION

On April 4, 2012, the Grand Jury returned a one-count indictment against defendant Mitchell R. Green, Jr. The indictment charged that on March 30, 2012, defendant knowingly and intentionally escaped from the custody of the Kansas City Community Center, an institution or facility in which he was lawfully confined at the direction of the Attorney General, in violation of 18 U.S.C. § 751(a).

On July 10, 2012, defense counsel filed a Motion for Determination of Competency, pursuant to 18 U.S.C. § 4241, asking that defendant undergo a psychiatric or psychological examination and that a report be filed with the Court concerning the defendant's mental ability to understand the proceedings presently pending against him and to properly assist in his defense (doc #21). On July 13, 2012, the Court ordered that defendant undergo a psychiatric or psychological examination.

Defendant Green was examined by Jeremiah Dwyer, Ph.D., a forensic psychologist at the Federal Detention Center in Englewood, Colorado. On October 11, 2012, Dr. Dwyer's Forensic Evaluation was filed with the Court. The evaluation concluded:

OPINION ON THE ISSUE OF PRESENT COMPETENCY TO STAND TRIAL

Based on the information available, there is no objective evidence to indicate that Mr. Green currently suffers from signs or symptoms of a major mental disorder, such as an affective disorder (e.g., Bipolar Disorder), psychotic disorder (e.g., Schizophrenia), or an organic disorder, that would impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense.

(doc #27 at 18)

On November 1, 2012, a hearing was held before the undersigned on defendant's Motion for Determination of Competency. The parties stipulated to the information contained within Dr. Dwyer's Forensic Evaluation. No other evidence was presented. Defense counsel advised that defendant does not contest his competency.

The only evidence before the Court on the issue of defendant's competency is the Forensic Evaluation of Dr. Jeremiah Dwyer. As set forth above, Dr. Dwyer found that "there is no objective evidence to indicate that Mr. Green currently suffers from signs or symptoms of a major mental disorder ... that would impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense." (doc #27 at 18)

Based upon the information before the Court, it is

RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order finding that defendant Mitchell R. Green, Jr. is not currently suffering from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assisting in his defense.

Counsel are reminded they have fourteen days from the date of this Report and Recommendation within which to file and serve objections. A failure to file and serve timely

objections shall bar an attack on appeal of the factual findings in this Report and Recommendation which are accepted or adopted by the district judge, except on grounds of plain error or manifest injustice.

/s/ Sarah W. Hays

SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE